IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Pankaj MEHRA	§	Confirmation No.:	3837
		§		
Serial No.:	10/694,323	§	Group Art Unit:	2443
		§		
Filed:	10/27/2003	§	Examiner:	Mark D. Fearer
		§		
For:	Configuration Validation	§	Docket No.:	200309900-1
	Checker	§		

REPLY BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Date: January 26, 2010

Sir:

Appellant has received the Examiner's Answer dated December 7, 2009. In response, Appellant reiterates each of the arguments set forth in the Appeal Brief dated September 9, 2009 and offers additional comments as follows.

I.   REPRESENTATIVE CLAIM 1

A.   Appellant's argument in the Appeal Brief

In Section VII(B) of the Appeal Brief, Appellant argued that Ball fails to disclose a limitation of representative claim 1. In particular, Ball fails to teach or suggest

> wherein the configuration validation checker receives topology information from an entity external to the switch and prevents said topology information from being used by the switch for routing purposes if the topology information fails to comport with local topology information stored in the switch,

as claimed. The Examiner previously argued that Ball taught this limitation at paragraph 0020. Appellant explained in the Appeal Brief that paragraph 0020 discusses the general setup of VLANs; states that broadcast traffic disseminated within a particular VLAN is routed only to ports within the VLAN; states that broadcast traffic is blocked from ports not belonging to that VLAN; and states that in the context of VLANs, routers may pass traffic from one domain to another and

from one VLAN to another. However, as Appellant explained in the Appeal Brief, at no point does Ball appear to teach or even suggest any sort of comparison of local topology information between switches, as claimed, nor does Ball mention preventing a switch from using topology information as a result of such a comparison. Finally, Appellant explained why the Examiner was misguided in attempting to analogize determination of VLAN membership to a comparison of topology information.

B. Examiner's Answer

The Examiner's answer to Appellant's foregoing arguments is succinct. The Examiner states that Ball, paragraph 0058 "teaches algorithms for detecting a change in network topology." The Examiner argues that this teaching "reads on the [c]laimed configuration validation checker receiving topology information from an external source." The Examiner also cites Ball, paragraph 0114 because it "teaches a spanning tree discovery process wherein discovered SpanTreeLink models are saved in a list, checked for border associations, and destroyed if there are any left over." The Examiner argues that this teaching "reads on the [c]laimed 'failing to comport.'"

C. Appellant's response

First, the Examiner fails to even address the entire limitation at issue. In the Appeal Brief, Appellant argued that the combination of references, including Ball, fails to teach

> wherein the configuration validation checker receives topology information from an entity external to the switch and prevents said topology information from being used by the switch for routing purposes if the topology information fails to comport with local topology information stored in the switch,

as claimed. In the Examiner's Answer, the Examiner has only addressed the receipt of topology information from an external entity and the failure to comport. The Examiner thus fails to fully address Appellant's argument.

Second, even the arguments that the Examiner does make are without merit. Merely citing paragraph 0058, which contains only a statement that algorithms detect changes in network topology, hardly constitutes evidence that

Ball teaches "wherein the configuration validation checker receives topology information from an entity external to the switch," as claimed. Further, the Examiner cites paragraph 0114, which states that a plurality of SpanTreeLink models are created; that "[i]f [an object] runs out, it will create more [SpanTreeLink models];" and that "[i]f there are some [models] left over, [the object] will destroy them." This verbiage seems wholly irrelevant to any kind of failure to comport. Further, this verbiage certainly does not teach or even suggest the claimed, "prevents said topology information from being used by the switch for routing purposes if the topology information fails to comport with local topology information stored in the switch." Thus, the Examiner's Answer is deficient for these additional reasons, and the Examiner remains in error.

II.   REPRESENTATIVE CLAIM 4

A.   Appellant's argument in the Appeal Brief

In the Appeal Brief, Appellant observed that Weil explicitly disparages discarding even one packet, much less **all packets**: "…the packet may either be discarded or returned. Such a scenario is **unacceptable** for high quality of service traffic such as voice traffic." Paragraph 0010, ll. 13-15.

> MPEP § 2145(X)(D)(1) provides:
>
> > [P]rior art must be considered in its entirety, including disclosures that teach away from the claims …
> >
> > A prior art reference that "teaches away" from the claimed invention is a significant factor to be considered in determining obviousness… *In re Gurley*, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994) …
> >
> > Furthermore, "the prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed.." *In re Fulton*, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

Given this MPEP teaching and Weil's strongly-worded language against discarding of packets, Appellant argued that Weil not only criticizes, discredits,

and discourages the solution claimed, but Weil also teaches away from combination with Kao and Sawada, each of which teaches discarding packets.

B. Examiner's Answer

The Examiner begins his argument by mischaracterizing Appellant's argument. Appellant's argument with respect to claim 4 is based on Weil's criticism of the discarding of packets and how such criticism teaches away from claim 4 as well as Kao and Sawada. The Examiner, however, states that "Applicant argues that Sawada et al., as modified by Ball et al., Weil et al. and Kao et al., fails to disclose the claimed elements of discarding all packets 'if the identifier value does not match a value in the topology information.' in Claim 4."

C. Appellant's response

Given that the Examiner fully mischaracterizes Appellant's argument regarding claim 4, the Examiner's response – as expected – argues points that are irrelevant to Appellant's argument. Specifically, with respect to the issue of dropped packets, the Examiner merely argues that paragraphs 0067-68 of Weil teach dropping packets. The Examiner fails to acknowledge Appellant's argument and fails to adequately respond to Appellant's argument. Appellant thus reiterates that Weil teaches against dropping packets, contrary to the teachings of claim 4, Kao and Sawada.

To the extent that Weil teaches dropping packets in paragraphs 0067-68, Appellant respectfully points out that of the two solutions described in those paragraphs, Weil immediately disparages one (see paragraph 0067) and later elucidates the other (compare paragraphs 0068, 0073 and 0076). Specifically, paragraph 0068 admits that packets might drop when using the DiffServ approach, but, in paragraphs 0073 and 0076, Weil explains that the DiffServ approach apparently minimizes dropped traffic (i.e., "the amount of traffic that is protected is high").

Thus, while Weil admits that packets may drop, Weil advocates approaches that minimize dropped packets and in general describes the dropping of packets as "unacceptable." Paragraph 0010. Weil's admission that packets

might drop does not detract from Weil's strongly-worded criticism of dropping packets.[1]

The Board may respond to the foregoing argument by arguing that Weil's teaching against the dropping of packets is negligible because the dropping of packets is never a desirable action. Respectfully, however, Appellant points out to the Board that Weil's dichotomy is different from the situation in claim 4. In Weil, the dropping of packets is portrayed negatively and is something to be avoided. In claim 4, by contrast, the packets that are dropped **should** be dropped, given that "the identifier value does not match a value in the local topology information." Thus, dropping of packets is desirable in some cases and is undesirable in other cases. In Weil, dropping of packets is clearly undesirable and thus, respectfully, the Board should give full weight to Weil's criticism of the same. The Examiner remains in error.

III.   CONCLUSION

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

/Nick P. Patel/

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[1] To offer a "real-world" analogy, while a consumer might pay an exorbitant fee for a service or good, such payment does not detract from the consumer's strong criticism of or distaste for payment of the same.